

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1386 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

THE STATE OF GUJARAT

Versus

JIVANBHAI PATEL, MAGAGER MONOGRAM MILLS.

Appearance:

Shri S.T.Mehta, Additional Public Prosecutor, for the Appellant - State.

Shri A.J.Patel, Advocate, for the Respondent - accused (Amicus Curiae).

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/10/96

ORAL JUDGEMENT

Should breach of safety measures required to be

provided in accordance with the Factories Act, 1948 (the Act for brief) and the Gujarat Factories Rules, 1966 (the Rules for convenience) framed thereunder be allowed to be dealt with leniently? The answer to this question should be in an emphatic 'NO'. It has been so answered by this court in its recent unreported ruling in Criminal Case No.456 of 1993 decided on 7th October 1996. The case on hand is another instance of leniency shown towards the breaker of the law in that regard. The adequacy of the sentence imposed on the respondent - accused by the learned Metropolitan Magistrate of Court No.4 at Ahmedabad by his judgment and order passed on 24th August 1993 in Criminal Case No.3931 of 1988 is questioned in this appeal at the instance of the State Government under Section 377 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned trial Magistrate convicted the respondent - accused of the offence punishable under Section 92 of the Act for contravention of Clause 6 in Schedule I appearing below Rule 54 of the Rules on his pleading guilty thereto and sentenced him to fine of Rs.750/- in default simple imprisonment for 30 days.

2. It is not necessary to set out in detail the facts giving rise to this appeal. Absence of safety measures in the factory in the name and style of Monogram Mills run under the stewardship of the respondent accused resulted in a mishap on 10th April 1988. One workman found his right hand crushed between two rollers and sustained injuries in his left hand in an attempt to take out his right hand entangled between the rollers. During his visit to the factory on 16th and 23rd May 1988 thereafter, the Factory Inspector found that safety measures as required to be taken under the aforesaid provisions of law were not provided in the machinery in question. Thereupon, he filed his complaint in Court No.4 of the Metropolitan Magistrate's Court at Ahmedabad charging the respondent herein as the Manager of the factory in question with the offence punishable under Section 92 of the Act read with the aforesaid provisions of the Rules. It came to be registered as Criminal Case No.3931 of 1988. The charge was explained to the respondent - accused and he pleaded guilty thereto. Thereupon, by his order passed on 24th August 1993 in Criminal Case No.3931 of 1988, the learned Metropolitan Magistrate of Court No.4 at Ahmedabad, after convicting the respondent - accused of the offence punishable under Section 92 of the Act, sentenced him to fine of Rs.750/in default simple imprisonment for 30 days. That aggrieved the prosecution agency. It has thereupon invoked the appellate jurisdiction of this court under Section 377 of

the Code for enhancing the sentence awarded by the learned trial Magistrate in the case in question.

3. Though served, the respondent - accused has appeared neither in person nor through any advocate. It appears from the Rojkam of the trial court that he did not appear in answer to the summons and his presence at the trial had to be secured by issuing a warrant for his arrest. Since the offence with which the respondent was charged and to which he pleaded guilty is quite serious and since this appeal is for enhancement of the sentence imposed on him by the learned trial Magistrate, I have thought it fit to appoint learned Advocate Shri A.J.Patel to represent the respondent - accused in this appeal.

4. It cannot be gainsaid that the offence with which the respondent was charged is a very serious offence. Absence or inadequate provision of safety measures in a factory would obviously expose its workers to hazardous and unsafe working conditions. This court had an occasion to dilate upon the importance of safety measures to be provided in the plant or in the machinery in a factory in accordance with the relevant provisions contained in the Act and the Rules framed thereunder. In Criminal Appeal No.456 of 1993 decided on 7th October 1996, this court has viewed quite seriously absence of or inadequacy of safety measures in the plant or the machinery in a factory for the purpose of award of the sentence even on pleading guilty to the offence by the accused at trial. I need not burden this judgment by repeating the same over again. Suffice it to say that the offence punishable under Section 92 of the Act for contravention of the provisions relating to safety measures made under the Act and/or the Rules framed thereunder has to be treated as a very serious offence. It cannot be dealt with in a lenient manner.

5. In the present case, the absence of safety measures has resulted in loss of two finger-tips of the left hand of the concerned workman and serious injury to his right hand as transpiring from the contents of the complaint on the record of the trial court. It is certainly a serious bodily injury to the concerned workman in absence of adoption of safety measures on the part of the respondent - accused who was the Manager of the factory in question at the relevant time. He cannot escape from the serious consequences arising therefrom.

6. The imposition of fine of Rs.750/- in default simple imprisonment for 30 days can be said to be too inadequate to persuade the respondent - accused herein to

provide for safety measures in the plant or the machinery in the factory of which he was the Manager at the relevant time. It cannot be gainsaid that one of the purposes of punishment is its deterrent effect. The offender should be punished in such a manner as to deter him from repeating the offence. The imposition of a very lenient punishment would encourage rather than deter the offender from repeating the offence. In that view of the matter, I think the punishment to be imposed on the respondent - accused in this case should be deterrent in its true meaning. The punishment in Section 92 of the Act is imprisonment which may extend to two years and fine which may extend to one lakh rupees. Since in this case the workman has suffered a serious bodily injury in absence of safety measures required to be taken under the Act and the Rules framed thereunder, I think it would be in the interests of justice if the respondent - accused is ordered to suffer rigorous imprisonment for six months and fine of Rs.75,000/- in default simple imprisonment for six months. Out of the fine, it would be in the fitness of things to order payment of Rs.15,000/- to the injured workman by way of compensation for the injuries suffered by him.

7. I shall fail in my duty if I do not record appreciation of valuable assistance rendered by learned Advocate Shri A.J.Patel appointed to appear on behalf of the respondent - accused in this appeal. It appears that learned Advocate Shri Patel sought instructions from the respondent - accused by writing to him a registered letter on 29th September 1995 indicating therein that he was appointed to assist this court in this appeal and he neither expected nor could he charge any fees from him for his representing him in the appeal. It is regretting that, despite serious efforts to seek instructions from the respondent - accused for the purpose of this appeal, learned Advocate Shri Patel has received no response to his communication though the respondent appears to have been served as transpiring from the postal acknowledgment received back duly signed. Learned Advocate Shri Patel has placed on record xerox copies of his communication of 29th September 1996 together with a copy of the postal receipt and the acknowledgment received back duly signed by or on behalf of the addressee.

8. In the result, this appeal is accepted. The fine of Rs.750/- imposed by the learned Metropolitan Magistrate of Court No.4 at Ahmedabad on the respondent accused by his judgment and order passed on 24th August 1993 in Criminal Case No.3931 of 1988 is modified and is enhanced to the sentence of rigorous imprisonment for six

months and fine of Rs.75,000/- (rupees seventy five thousand) in default simple imprisonment for six months. The fine imposed by the learned trial Magistrate, if paid, may be given set off against the enhanced fine imposed on the respondent - accused in this appeal. On payment of the enhanced fine by and/or on behalf of the respondent - accused, an amount of Rs.15,000/- is ordered to be paid to the injured workman. An arrest warrant is ordered to be issued for arrest of the respondent accused.

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